

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7081 of 2007

(CC NO. 520/2004 OF JFCM-I PUNALUR- CRIME NO. 115/2004 OF ANCHAL POLICE STATION)

PETITIONER/ACCUSED

**VINOD KUMAR, S/O., SIVARAMANUNNITHAN
SANTHOSH BHAVAN, KOMBETTIMALA, ASURAMANGALAM MURI
EDAMULAKKAL VILLAGE, PATHANAPURAM TALUK,
KOLLAM.DISTRICT.**

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

**STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE
ANCHAL POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R.BASANT, J.

B.A.No.7081 of 2007

Dated this the 21st day of November 2007

O R D E R

Application for anticipatory bail. The petitioner is the husband of the de facto complainant. He faces allegations under Section 498A I.P.C. Final report has already been filed. Cognizance has been taken. The petitioner has not appeared before the learned Magistrate. Thereupon a warrant of arrest has been issued against the petitioner. The case has been transferred to the list of long pending cases. The petitioner apprehends imminent arrest in execution of coercive processes issued by the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for

that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003 (1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007